HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE MS JUSTICE G. ROHINI

Writ Appeal No.883 of 2007

Between:

Marella Jangaiah

… Appellant

And

M. Narsinga Rao and two others

… Respondents

Counsel for the appellant : Ms. Padma Saranappa for
Shri B. Nalin Kumar

::JUDGMENT::

October 25, 2007

Per G.S. Singhvi, CJ

The appellant, who was benefited by order dated 1-10-1994 passed by Joint Collector, Ranga Reddy District (respondent No.3 herein) for cancellation of the assignment of Acs.5.00 of land made in favour of the writ petitioner (respondent No.1) in the year 1961, has filed this appeal for setting aside order dated 13-7-2007 passed by the learned Single Judge in Writ Petition No. 30638 of 1997, whereby he nullified orders

dated 1-10-1994 and 6-10-1997 passed by respondent No.3 and the Special Commissioner, Land Revenue, Andhra Pradesh (respondent No.2 herein) respectively.

Shri Chandrasekara Sharma (father of respondent No.1) was assigned Ac.2.38 guntas of land comprised in Survey No.300/15 situated at Kangarakala Village, Ibrahimpatnam Mandal, Ranga Reddy District by being treated as a landless poor person. Respondent No.1 was assigned Ac.5.00 of land in Survey No.300/16 of the same village. Both the assignments were made in the year 1961. After more than 30 years of the assignment of land to respondent No.1 and his father, Revenue Divisional Officer, Hyderabad (East) sent letter dated 24-3-1992 to respondent No.3 for cancellation of the assignment of Ac.2.38 guntas of land by pointing out that the assignment of total Ac.7.38 guntas of land to the father and son was legally impermissible. Respondent No.3 issued notice dated 4-6-1992 to the father of respondent No.1 and called upon him to show cause against the proposed cancellation of the assignment of Ac.2.38 guntas of land. In his reply, Shri Chandrasekara Sharma pleaded that assignment was made by Tahsildar, Ibrahimpatnam after making due enquiry and they were in possession and enjoyment of the land for last more than 30 years. After considering the reply and other records, respondent No.3 passed order dated 1-10-1994, whereby he cancelled the assignment made in favour of respondent No.1 and directed Mandal Revenue Officer, Ibrahimpatnam to assign the same to the appellant herein, who had got himself impleaded as party to the proceedings. The appeal preferred by respondent No.1 against the order of cancellation was dismissed by respondent No.2 vide his order dated 6-10-1997.

The learned Single Judge referred to Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, policies framed by the government from time to time for assignment of land to landless poor persons, the judgments of this Court in **A.**

Kodanda Rao v. Govt. of A.P.[1] and **Gudepu Sailoo and others v. Government of Andhra Pradesh**[2] and held that even though the total land assigned to the writ petitioner and his father was in excess of Ac.5.00, the same could not have been cancelled after lapse of more than 30 years.

Ms. Padma Saranappa, learned counsel for the appellant submitted that the order under challenge is liable to be set aside because the learned Single Judge gravely erred by nullifying the order of cancellation of assignment only on the ground of delay ignoring the fact that respondent No.1 and his father were not entitled to be assigned more than Ac.5.00 of land.

In our opinion, there is no merit in the submission of the learned counsel and the appeal is liable to be dismissed summarily.

A careful scrutiny of the record shows that respondent No.1 had challenged orders dated 1-10-1994 and 6-10-1997 on several grounds including the one of violation of the rules of natural justice. He specifically pleaded that order dated 1-10-1994 was passed by respondent No.3 without giving him notice and opportunity of hearing. In the counter filed on behalf of the official respondents, it was pleaded that the assignment made in favour of the writ petitioner in 1961 was illegal because at the relevant time, he was minor and his father had already been assigned Acs.2.38 guntas of land by being treated as landless poor. It was also pleaded that before cancelling the assignment, notice was given to his father Shri M. Chandrasekara Sharma, who appeared and contested the proposed cancellation of assignment. However, it was not denied that the writ petitioner was not given notice and opportunity of hearing by respondent No.3.

The learned Single Judge took cognizance of the fact that cancellation had been brought about after a period of more than 30 years and there was no reasonable explanation for the long time gap between the date of assignment and suo motu action initiated by the

Joint Collector for cancellation of the assignment.

We are in complete agreement with the learned Single Judge that the assignment made in favour of respondent No.1 could not have been cancelled after a time gap of 33 years, more so, because the concerned officer did not explain as to why action in that regard was not taken for more than three decades.

There is an additional reason for our disinclination to interfere with the order of the learned Single Judge. The pleadings of the writ petition show that while respondent No.1 had come out with a specific case that the assignment made in his favour was cancelled without notice and opportunity of hearing, the appellant and official respondents did not deny the same. It is, therefore, clear that order dated 1-10-1994 was passed in clear violation of the rule of audi alteram partem. The notice given to the father of respondent No.1 was in respect of Ac.2.38 guntas of land and not Ac.5.00 of land. Therefore, on the basis of that notice, the assignment of Ac.5.00 of land made in favour of respondent No.1 could not have been cancelled. In any case, such an action could not have been taken without giving specific notice to respondent No.1 proposing cancellation of the assignment made in his favour.

No other point has been urged.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

G. ROHINI, J

October 25, 2007
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[1] 1981 (2) APLJ 158
[2] 1998 (3) ALD 652